

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES GORDON KENNIE,

Defendant-Appellant.

UNPUBLISHED

August 6, 1999

No. 210254

Bay Circuit Court

LC Nos. 93-001432 FH &

94-001219 FH

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,* JJ.

MEMORANDUM.

In 1994, defendant pleaded guilty of receiving and concealing stolen property over \$100, MCL 750.535; MSA 28.803, and was sentenced to probation. A few months later, defendant was found guilty of violating probation, and he left jail without being lawfully discharged while awaiting sentencing. This resulted in a new plea-based conviction in 1994 for jail escape, MCL 750.195(2); MSA 28.392 (2), for which defendant was again sentenced to probation. Defendant again violated the terms of his probation in 1995, 1996 and 1997, and he also pleaded guilty to a new charge of larceny in a dwelling in 1997, but his probation status was not revoked until he pleaded guilty to new probation violation charges in early 1998. At that time, defendant was sentenced to two to five years' imprisonment on the receiving and concealing conviction, with credit for eighty days served, consecutive to a sentence of thirty-two to forty-eight months' imprisonment on the jail escape conviction, with credit for 234 days served.¹ Defendant now appeals these two sentences by right. We affirm.

On appeal, defendant argues that his prison sentences violate the principle of proportionality. Specifically, defendant asserts that the sentencing court failed to give due consideration to such "mitigating factors" as his youth (aged twenty-three at the time of sentencing in 1998), his alleged alcohol addiction, the county jail terms previously deferred by the court and the original sentencing guidelines recommendations. We disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

The sentencing guidelines do not apply to probation violators and therefore cannot be used in any manner for determining whether a defendant's probation violation sentences are disproportionate. *People v Williams*, 223 Mich App 409, 413; 566 NW2d 469 (1997). That a defendant might be an alcoholic in need of treatment does not necessarily render a prison sentence improper. See *People v Rettelle*, 173 Mich App 196, 201; 433 NW2d 401 (1988). Defendant was given numerous opportunities for reform and rehabilitation through probation and other prison alternatives, such as tether monitoring. Given the circumstances of the underlying offenses, as well as defendant's lengthy record of probation violations and other post-conviction misconduct, we are persuaded that defendant's sentences are proportionate to the offense and the offender.

Affirmed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette

¹ Defendant was also sentenced to a term of twenty-six to forty-eight months' imprisonment as a probation violator in his 1997 larceny case. This Court has already denied defendant's application for leave to appeal challenging the proportionality of that sentence, for "lack of merit in the grounds presented." *People v Kennie*, unpublished order of the Court of Appeals, entered November 17, 1998 (Docket No. 213718).